

Oral Palimony Pact Upheld in One of Last Cases Before Statute Of Frauds

By David Gialanella

A man found to have been clearly living the married life, despite his same-sex partner's denials of a romantic relationship, is entitled to a half share of their one-time Jersey City home.

Upholding a nonwritten palimony agreement — the type no longer enforceable under a statute that took effect last year — Hudson County Superior Court Judge Claude Coleman Jr. found "overwhelming evidence" that the parties "lived together, and had made a commitment to each other to support each other, to share with each other, and most of all, as is implicit in every agreement, to treat each other fairly and avoid harm to the other."

The defendant's attempts to paint the arrangement as one of roommates versus that of a devoted couple was a breach of good faith and fair dealing. Coleman ruled on Oct. 6 in *Fernandes v. Arantes*, FD-09-1421-10, a case filed before Jan. 18, 2010, the effective date of a law subjecting palimony agreements to the statute of frauds.

Carlos Fernandes, a Portuguese native, and Lauro Arantes, originally from Brazil, met in Lisbon, Portugal in 1996, and moved in together weeks later. Months afterward, they moved to the U.S., initially staying at Arantes' friend's apartment in Queens before moving to Beverly Hills, Calif.

Arantes moved to Miami in 1998, with Fernandes joining him six months later. A year after that, Fernandes moved to a New York apartment and Arantes soon joined him.

They moved to an apartment in Jersey City in 2001 and bought a home there in 2005. Originally, Arantes' name alone appeared on the deed, though Fernandes' name was added later.

They never married or entered a formal union but exchanged vows in informal settings, and they shared expenses and investments and supported each other financially, Fernandes claimed.

In April 2009, Arantes obtained a temporary restraining order, alleging Fernandes assaulted him. The case was dismissed, though a no-contact order was issued, effectively preventing Fernandes from accessing the Jersey City home or any belongings inside.

Fernandes filed a motion on Oct. 20, 2009, seeking access to the home to retrieve belongings and computer-stored financial information, as well as replacement of \$80,000 Arantes allegedly withdrew from their joint bank account. On Feb. 15, 2011, he filed an amended complaint, alleging palimony and unjust enrichment.

Arantes said the relationship ended in 2001



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around the time they moved to New Jersey, claiming the two continued to cohabitate only for financial reasons.

During trial, Arantes produced a quitclaim deed transferring Fernandes's property interest to Arantes and bearing Fernandes' signature, though Fernandes denied any knowledge of the document.

Coleman found that, despite the absence of a formal ceremony or contract, the relationship created an implied palimony contract. He cited *Kozłowski v. Kozłowski*, 80 N.J. 378 (1979), saying, "Parties who entered into these kinds of relationships usually do not record their understanding in specific legalese."

The nature of their arrangement was evidenced by joint bank accounts, their purchasing property together and their shared efforts to enhance the property's value through improvements, he said.

"They did for each other whatever each was capable of doing, providing companionship and fulfilling each [other's] needs, financial, emotional, physical and social," Coleman said, following *Estate of Roccamonte*, 174 N.J. 381 (2002), which held that "a marital-type relationship is sufficient consideration to enforce a promise for support."

Coleman took stock in the apparently impartial testimony of friends, many of whom knew the couple well over the past several years, who said they were partners. He found less credible the testimony of Arantes' "old" friends from Portugal or Brazil, whom he found appeared coached, gave similar answers

and attempted to paint Fernandes as a temperamental drug abuser.

Coleman found that Arantes' testimony was "riddled with inconsistencies, contradictions, and evasions," that he "refused to answer any questions without a soliloquy" and that he "had to be instructed several times to just answer the question/s posed."

The judge also pointed to marital counseling the two had attended and overseas trips they took in 2009, as well as text messages from Arantes, one of which stated "Of course I love you." He called Arantes' denials of these occurrences "incredible."

Coleman also found credible a handwriting expert's testimony that the signature on the quitclaim deed did not belong to Fernandes.

Arantes' expulsion of Fernandes from the home and denial of his interest in the property amounted to a breach of the covenant of good faith and fair dealing, Coleman said.

The judge declared the quitclaim deed null and void and ordered Fernandes' one-half interest in the Jersey City property restored. He also ordered that Fernandes have access to the home to retrieve belongings and said he would appoint an independent mediator to evaluate disputes over them.

Arantes was ordered to pay 70 percent of the mediator fees and Fernandes 30 percent.

N.J.S.A. 25:1-5(h), the statute making palimony agreements unenforceable unless made in writing and with the independent advice of counsel for both parties, was held in *Botis v. Estate of Kudrick*, 421 N.J. Super. 107 (App. Div. 2011), to apply only to suits filed after its effective date.

Fernandes lawyer, Jersey City solo Michael Pastacaldi, says his client was lucky to have lodged the suit before the measure passed. He calls it unfortunate that future cases like this one, where "the equities are so strong," would be barred under the new law.

"It was not a problem proving they had a marital-type relationship," Pastacaldi says. "They were a couple, essentially more married than most married people."

Arantes' lawyer, Jersey City solo Roberta Tarkan, says Fernandes and Pastacaldi "did not come out winners," pointing out that more is owed on the mortgage than the property itself is worth.

She adds that Fernandes originally was seeking support payments, and so came out of the matter with considerably less than he originally wanted.

Tarkan calls the case "a waste of litigation" that is "not worth any appeal," adding, "I was always trying to cut this case as short as possible."